SINGLE BENCH

c.s.100/

5

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

W.P. NO.3769/2006

PETITIONER : Smt.Mahboobi Khan
Aged about 38 years
W/o. Ashaf Khan
R/o. Village- Bhopalpattanam,
Post - Bhopalpattanam
Tahsil Bhopalpattanam, District
South Bastar Dantewada,
(C.G.)

P.R. No. 3826/06
Presented by Shri Sanjeev Shukla
dated 21/12/06

VERSUS

RESPONDENTS : 1. State of Chhattisgarh
Through : Secretary
Tribal Welfare Department
D.K.S. Bhawan, Raipur (C.G.)

2. Assistant Commissioner
Tribal Development Department
Distt. Dhantewada (C.G.)

3. Block Education Officer
Block Bhopalapattam,
Distt. Dhatntewada (C.G.)

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COMMISSIONER
KARNA MALVIYA
CG 5196
20/12/06
Bilaspur Chhattisgarh

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3.8.2006:-

W.P. Nos.3755/2006, 3756/2006, 3757/2006, 3758/2006, 3759/2006, 3760/2006, 3761/2006, 3762/2006, 3763/2006, 3764/2006, 3765/2006, 3766/2006 and 3767/2006.

Dr. Shailesh Ahuja, counsel for the petitioners.

Shri Sumesh Bajaj, G.A. for the respondents, on advance copy.

Heard both the counsel.

By the instant petitions, the petitioners have questioned their transfer order Annexure-P/3 dated 5-7-2006 whereby the petitioners who are working as teachers have been transferred under the Rationalization Scheme, Annexure-P/1, dated 1-6-2006 on the ground of being excess teachers in the schools where there were teaching.

The preliminary objection has been raised by the State Counsel that as per the scheme Annexure-P/1 under which the petitioners have been adjusted/transferred, clause-7 of the scheme provides for an appeal before the appellate authority and the petitioners have not preferred an appeal and directly approached this Court.

Learned counsel for the petitioners argued that sub-clause (घ) of clause 5 of the Scheme provides for counselling in the Collector's office by a Committee and the Committee was required to conduct counselling after giving notice to the affected teachers and after seeking their options, orders were to be passed thereafter. But in these cases, the above clause has not been complied with for the reason that the petitioners were given notice on 1-7-2006 and counselling was fixed for 5-7-2006 and during this period, on account of heavy rain in the area, all the roads were blocked and, therefore, the petitioners could not present themselves before the said counselling, without hearing the petitioners, the impugned order has been passed, therefore, this is not only in violation of principle of natural justice but also

P.T.O.

(51)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sub-clause (घ) of clause 5 of the Scheme. The concerned committee ought to have considered the said aspect and ought to have given opportunity of hearing to the petitioners as per the clause.

Even if there is violation of sub-clause (घ) of clause 5 of the Scheme, as the mechanism has been devised in the scheme that aggrieved person is entitled to file an appeal against the Committee's decision, therefore, I am of the considered opinion that in the first instance, the petitioners ought to have preferred an appeal before the appellate authority and if they were not satisfied with the decision of the appellate authority, thereafter only they should have approached this Court. In the circumstances, these writ petitions filed by the petitioners without availing the right of appeal cannot be entertained and same are dismissed.

However, learned counsel for the petitioners submitted that as 7 days' time is provided for filing an appeal and the petitioners have filed the present petitions, therefore, time taken by the petitioners in filing these writ petitions may be condoned and the appellate authority be directed to accept the appeal.

The prayer made by learned counsel for the petitioners is reasonable, therefore, time taken by the petitioners in filing these writ petitions is condoned. If the petitioners file an appeal before the appellate authority within a week from today, then the appellate authority to decide the appeal as early as possible preferably within a period of 30 days after considering all the points raised by the petitioners and pass appropriate order, in accordance with law, as 13 writ petitions have been filed in this Court arising out of the same order.

In view of this order, all the pending applications stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Barve

4-8-06 7-8-06